

Attorney Docket No.: 9537-3
Application Serial No.: 10/658,932
Filed: September 9, 2003
Page 12 of 13

REMARKS

This response is submitted in reply to the Office Action dated January 25, 2006 ("the Action"). The Action states that the application contains claims directed to patentably distinct species with respect to the solid or base material and the means for affixing the implant to the vertebrae. As such, the Action states that Applicant is to elect a single disclosed solid or base material species from the set of materials discussed in Examples 1-7 of the specification and a single spinal affixation species (*i.e.*, Figure 4, 5 or 6 or other physical features described in the specification). The Action then requests that Applicant provide a listing of all claims readable on the elected species.

Applicant provisionally elects, with traverse, the base material species discussed in Example 1. Applicant also provisionally elects, with traverse, a fixation or attachment embodiment with at least one appendage extending outwardly from the main implant body (extending in the superior and/or inferior direction) that attaches to a proximate vertebral bone as described, for example, with respect to Figure 4. The fixation embodiment can include a band that attaches to the implant body as shown in Figure 4. The band and/or fixation appendages can be integrally molded to the implant body and may include fabric fixation appendages (Ex. 7) as well as cryogel appendages (Ex. 6, para. 54). The implant with the fixation embodiment provisionally elected may also include surface modifications.

Applicant submits that the claims that are readable on (generic and/or specific to) the elected base material species are Claims 1-7, 9, 13-14-22, 23, 24, 25, 26, 28, 29, 34, 35, 36-52, 56-62, 63-69, and 71-73.

Applicant submits that the claims readable on (generic and/or specific to) the outwardly extending appendages, such as that shown in Figure 4, includes:
Claims 1-28, 29, 34-71, and 72-73.

Attorney Docket No.: 9537-3
Application Serial No.: 10/658,932
Filed: September 9, 2003
Page 13 of 13

CONCLUSION

Accordingly, Applicant submits that the present application is in condition for allowance and the same is earnestly solicited. The Examiner is encourage to telephone the undersigned at 919-854-1400 for resolution of any outstanding issues.

Respectfully submitted,

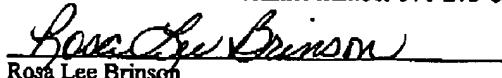


Julie H. Richardson
Registration No. 40,142

USPTO Customer No. 20792
Myers Bigel Sibley & Sajovec
Post Office Box 37428
Raleigh, North Carolina 27627
Telephone: 919/854-1400
Facsimile: 919/854-1401

CERTIFICATION OF FACSIMILE TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office via the central facsimile number 571-273-8300 on February 9, 2006.


Rosa Lee Brinson